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HAWAII LABOR  
RELATIONS BOARD

Attorneys for Director of Labor  
and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	) CASE NO. OSH 2009-31
	) (Inspection No. 311435754)
DIRECTOR, DEPARTMENT OF LABOR	)
AND INDUSTRIAL RELATIONS,	) STIPULATION AND SETTLEMENT
	) AGREEMENT; EXHIBITS "A"- "B";
Complainant,	) APPROVAL AND ORDER
	)
vs.	)
	)
McCLONE CONSTRUCTION CO.,	)
	)
Respondent.	)

**STIPULATION AND SETTLEMENT AGREEMENT**

Complainant Director of Labor and Industrial Relations ("Director") and Respondent McCLONE CONSTRUCTION CO. ("Respondent") having reached a full and complete settlement of the above-captioned contested case presently pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about December 5, 2008, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located at 3359 Hoolaulea Way, #201, Lihue, Hawaii 96766.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on April 20, 2009 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$525.00. *See* Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").

2. At all relevant times, Respondent maintained a workplace at 3359 Hoolaulea Way, #201, Lihue, Hawaii 96766.

3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

4. The Director agrees to delete Citation 1 Item 1, which is the only alleged violation in Respondent's Citation.

5. In return, Respondent agrees to do the following:

a. Provide specific on-site retraining regarding floor openings and handrail installation, both on grade and at elevated slabs.

b. Have Respondent's Jobsite Inspection Report undergo review by its senior management for content and clarity to ensure there is an effective means for follow-up action and accountability. Any improvements Respondent is able to make will be adopted company-wide.

c. Have all Jobsite Inspection Reports copied to Respondent's Safety

Coordinator, Project Manager, and Regional Manager for review;

d. Distribute the attached memorandum issued 08/14/2009, see Exhibit "B", from Respondent's Regional Manager to all current projects. Have the memorandum read to all of Respondent's Team Members then posted. The memorandum sends a firm message requiring everyone's obligation towards a safe work environment.

e. Arrange for HIOSH consultation safety services within 60 days after this Agreement is filed and make the services an integral part of Respondent's safety program on current and future projects.

f. Continue to provide a high level of instruction and training to Respondent's project Team Members.

6. This Agreement and the Citation, as amended above, shall become a final order of the Director.

7. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

8. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

9. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

10. The Parties agree that upon the approval of this Agreement by the Board, the Board shall dismiss this case and Respondent's appeal.

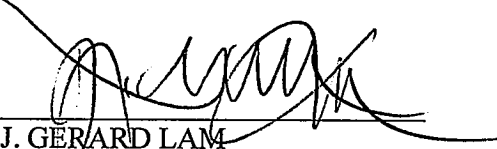
DATED: Honolulu, Hawaii, August 31, 2009.

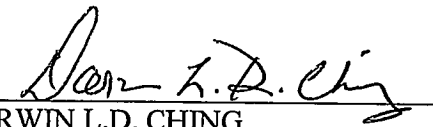
McCLONE CONSTRUCTION CO.

By:  CHRIS MOES  
Its: Senior Project Manager

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND  
INDUSTRIAL RELATIONS

  
J. GERARD LAM  
Deputy Attorney General  
Attorney for Director of Labor and  
Industrial Relations, State of Hawaii

  
DARWIN L.D. CHING

APPROVED AND SO ORDERED BY  
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 346  
DATED: August 31, 2009

  
JAMES B. NICHOLSON, Chair

  
EMORY J. SPRINGER, Member

  
SARAH R. HIRAKAMI, Member

In re: Director, Dept. Of Labor And Indus. Relations v. McClone Construction Co., Case No.  
OSH 2009-31, Stipulation And Settlement Agreement; Exhibits "A"- "B"; Approval And Order.

## State of Hawaii

Department of Labor and Industrial Relations  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET, ROOM 425  
HONOLULU, HI 96813  
Phone: (808)586-9110 FAX: (808)586-9104



Certified Number: 7005 1820 0003 3812 2143

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### Citation and Notification of Penalty

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**To:**

McClone Construction Co  
and its successors  
128 Kio Lp  
Kihei, HI 96753

**Inspection Number:** 3 1 1 4 3 5 7 5 4 (Ray  
Mishima)  
**Inspection Date(s):** 12/05/2008- 12/05/2008  
**Issuance Date:** 04/20/2009  
**OSHSO ID:** Y5214  
**Optional Report No.:** 01509  
**Inspection Type:** Programmed Related  
**Scope of Inspection** Comprehensive Inspection

**Inspection Site:**

3359 Hoolaulea Way #201  
Lihue, HI 96766

*The violation(s) described in this Citation  
and Notification of Penalty is (are) alleged  
to have occurred on or about the day(s) the  
inspection was made unless otherwise  
indicated within the description given below.*

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This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

**Posting** - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

**Informal Conference** - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

**Employers' Right to Contest** - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

**Penalty Payment** - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**Notification of Corrective Action** - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-51-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

**Employer Discrimination Unlawful** - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

**Employer Rights and Responsibilities** - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

**Employees' Right to Contest** - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

**Inspection Activity Data** - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at [WWW.OSHA.GOV](http://WWW.OSHA.GOV). If you have any dispute with the accuracy of the information displayed, please contact this office.

## ABATEMENT CERTIFICATION

DARWIN L.D. CHING, DIRECTOR  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET, ROOM 425  
HONOLULU, HI 96813

McClone Construction Co  
128 Kio Lp  
Kihei, HI 96753

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_.

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_.

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_.

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_.

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_.

I attest that the information contained in this document is accurate and that the affected employees and their  
representatives have been informed of the abatement activities described in this certification.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name





## NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 04/20/2009. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, HONOLULU, HI, 96813 on \_\_\_\_\_ at \_\_\_\_\_.

Employees and/or representatives of employees have a right to attend an informal conference.



**Citation and Notification of Penalty**

Company Name: McClone Construction Co  
Inspection Site: 3359 Hoolaulea Way #201, Lihue, HI 96766

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**Citation 1 Item 1** Type of Violation: **Serious**

29 CFR 1926.501(b)(4)(i) [Refer to chapter 12-121.2, HAR] was violated because:

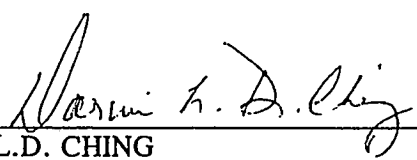
An employee was working near an unguarded floor hole about 12" wide x 6' 3" deep without fall protection and could get injured.

29 CFR 1926.501(b)(4)(i) states "Each employee on walking/working surfaces shall be protected from falling through holes (including skylights) more than 6 feet (1.8 m) above lower levels, by personal fall arrest systems, covers, or guardrail systems erected around such holes."

Location: The inn at the Cliff's Building

Date By Which Violation Must be Abated:  
Penalty:

Corrected  
\$ 525.00

  
\_\_\_\_\_  
DARWIN L.D. CHING  
Director

# **MEMORANDUM**

Issued 8/14/2009

To: All NW Team Members

From : Ken Ridens, Regional Manager - Operations

Topic: Our obligation to safety

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McClone Construction has always strived to be the leader in safety. As regulations change, new equipment is designed and procedures are instituted, our safety program will continue to evolve. As our safety program continues to improve and the quality of our Team Members has also improved, so has our injury rate steadily declined.

We believe that no injury is acceptable. All injuries have a root cause that was preventable had the proper steps or precautions been taken. Was the proper tool used? Was there training provided to use the tool correctly? Was there pre-task planning conducted? Were all the safety precautions followed and safety equipment used correctly? We must all choose to be safe by choosing to use the right tool, choosing to follow the proper procedure, choosing to look for potential hazards and plan to complete the task accordingly.

Each of us must accept the responsibility and obligate ourselves to make the right choice each and every time. Everyone must be held accountable for their actions. **Your safety and the safety of those around you depend on this.**

What leaders expect:

- If it's not safe, don't do it, and don't have your co-workers do it either.
- If you see something unsafe, speak up to that person or their foreman.
- If you are unsure of something or don't understand, speak up.

What to expect from a leader:

- If you stop something for safety reasons, he will back you up.
- If you bring up a safety concern, it will be addressed immediately.
- If there is an injury or near miss, it will be fully investigated. The goal is to learn from it to avoid a similar occurrence in the future.

Remember, every McClone Construction Team Member is obligated to:

- Conduct their work in a safe manner.
- Stop work immediately when an unsafe condition is encountered.
- Take corrective action, to ensure the unsafe condition is corrected, so that work may proceed in a safe manner.

**I ask each of you to re-commit your personal obligation to safety now!**